NOS. 388 and 389

In the Supreme Court of the United States

OCTOBER TERM, 1948

WELKER B. BROOKS, *Petitioner*

v.

THE UNITED STATES OF AMERICA

JAMES M. BROOKS, Administrator of the Estate of Arthur L. Brooks, Deceased, *Petitioner*

v.

THE UNITED STATES OF AMERICA

On Petition for Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

CITATIONS

CASES:

STATUTES:

MISCELLANEOUS:

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OPINIONS BELOW

The opinion of the District Court for the Western District of North Carolina (R. 29-34) is not reported. The opinion of the Court of Appeals for the Fourth Circuit (R. 40-49) is reported at 169 F. 2d 840.

JURISDICTION

The judgments of the Court of Appeals were entered in both cases on August 26, 1948 (R. 58, 60). The petition for writs of certiorari was filed on October 30, 1948. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether the District Courts of the United States may, under the Federal Tort Claims Act,[1] enter judgments on claims for damages resulting from injury or death of a soldier where the claimants have already been paid pensions, death benefits, and all other benefits provided by military and veterans' laws.

STATUTE INVOLVED

The pertinent provisions of the Federal Tort Claims Act[2] are reprinted in the Transcript of Record (R. 1).

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[1] C. 753, 60 Stat. 842. The provisions of the Act have been incorporated into the revision of Title 28, United States Code, by the Act of June 25, 1948 (Public Law 773, 80th Cong., 2d sess.) at Sections 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, and 2671-2680. This revision took effect September 1, 1948. However, the new code sections, which are here relevant, are for convenience still referred to in the aggregate as the Federal Tort Claims Act.

[2] Section 410(a), reprinted in the Record (R. 1), now appears, with changes not here material, as Section 1346(b) of the new Title 28. See footnote 1, *supra*.

STATEMENT

On February 17, 1945, Arthur L. Brooks, accompanied by his brother, Welker B. Brooks, both enlisted men in the Army on authorized leave, was driving in his privately owned car on a public highway near Fayetteville, North Carolina (R. 30). Upon entering an intersection in the highway, the car collided with an Army truck driven by a civilian employee of the War Department on official business (R. 11, 21, 30). Arthur Brooks was killed instantly and his brother was injured (R. 11, 21).

Shortly after his discharge from the Army in December 1945, Welker B. Brooks applied to the Veterans' Administration for disability compensation and has been receiving, ever since May 1946, $27.60 monthly for the injuries he sustained in the accident involved in this case (R. 27-28). In addition to his full army pay and allowances during the period of his incapacity, the record also shows that the United States furnished, without cost to him, all necessary medical, surgical, and hospital services (R. 28).

The mother of the deceased soldier Arthur L. Brooks, has received from the United States a six-months' death gratuity payment and the Government is also paying her and her husband the proceeds of a $5,000 National Service Life Insurance policy (R. 29, 35-36). The record further discloses that a claim filed by the deceased soldier's parents

for monthly pension benefits was not allowed because dependency had not then been shown (R. 36).

On December 24, 1946, James M. Brooks, as administrator of the estate of his son, Arthur, brought suit against the United States in the United States District Court for the Western District of North Carolina under the Federal Tort Claims Act (R. 13-16). Welker B. Brooks filed a similar suit at the same time for damages for his personal injuries (R. 3-6). The United States filed answers to both complaints, denying negligence on the part of the civilian employee of the War Department and alleging contributory negligence. After the cases were consolidated and tried together, the District Court, on conflicting evidence, found that the Army truck had been operated negligently, and that the injuries sustained by Welker B. Brooks, as well as his brother's death, were proximately caused by such negligence (R. 10-11, 20-22). The court, on November 8, 1947, entered judgment for $4,000 for Welker's personal injuries and for $25,000 for the death of Arthur (R. 12, 22). In its opinion, the District Court held that the receipt of disability compensation by Welker B. Brooks from the United States did not bar additional recovery by him under the Federal Tort Claims Act (R. 32). On January 7, 1948, that court also denied motions by the United States to dismiss the suits on the ground of lack of jurisdiction of the District Courts to entertain suits under the Federal Tort

Claims Act for damages for injuries to, or death of, a serviceman (R. 12-13, 25).

On appeal, the court below, rejecting each of the contentions here reasserted by petitioners, held that "the Federal Tort Claims Act does not apply to claims by soldiers in the United States Army, even when those claims arise out of injuries or death which, as here, are not service-caused" (R. 49). It accordingly reversed both judgments of the District Court (R. 49). Judge Parker dissented (R. 49-58).

ARGUMENT

Petitioners seek review of the decision below, not only on the ground that it was incorrect, but also on the grounds that the basic question decided is one of first impression involving the application of an important federal statute and calls for an authoritative ruling by this Court (Pet., p. 4). We submit, however, that the decision below is correct and that it accords with decisions of other federal courts interpreting similar statutes. This Court has heretofore denied review of like questions arising under other acts waiving governmental immunity from tort liability where petitioners sought an interpretation which would force the United States twice to compensate injured members of the armed forces. *Bradley v. United States*, 151 F. 2d 742 (C. C. A. 2), certiorari denied, 326 U. S. 795, rehearing denied, 328 U. S. 880; *Dobson v. United*

States, 27 F. 2d 807 (C. C. A. 2), certiorari denied, 278 U. S. 653. Moreover, the judgments below are sustainable on an independent ground, not passed upon by the court below, that petitioners, having elected to accept the benefits conferred on members of the armed forces and their dependents by various other statutes, may not now recover under the Federal Tort Claims Act.

1. Petitioner's chief contention (Pet. 8-13) that the Federal Tort Claims Act, if read literally, covers soldiers' personal injury and death claims, ignores evidence of a contrary legislative intent.[3] That intent, as revealed by the purpose of the Act, by a well-defined legislative policy providing an adequate and comprehensive scheme of special statutory benefits for a soldier's injury or death, and by Congressional awareness, at the time of the passage of the Act, of the consistent judicial interpretation of cognate legislation, repudiates the literal reading urged by petitioner.

a. The purpose of the Federal Tort Claims Act, which appeared as Part IV of the Legislative Reorganization Act of August 2, 1946, (60 Stat. 812), is: "To provide for increased efficiency in the legislative branch of the Government." Prior to the Act, Congress had been compelled to divert its time and energies to the consideration of thousands

[3] Cf. *Boston Sand Co.* v. *United States*, 278 U. S. 41, 48; *United States* v. *Dickerson*, 310 U. S. 554, 561.

of private bills authorizing payment for personal injury or death caused by tortious conduct of governmental employees. Section 131 of the Legislative Reorganization Act specifically prohibited the introduction of such private bills (60 Stat. 821), substituting access to the courts through the Federal Tort Claims Act, and thus facilitated greater legislative efficiency.[4]

That the Act of August 2, 1946, was not aimed at the elimination of private acts passed on account of soldiers' deaths or injuries, but rather at the elimination of the huge number of bills introduced in behalf of non-servicemen, is evident from the fact that no appreciable number, if any at all, were enacted in behalf of servicemen.[5] The well-known

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[4] See Report of the Joint Committee on the Reorganization of Congress, Sen. Rep. No. 1011, 79th Cong., 2d sess., p. 25 (1946), discussing this point under the heading: "More Efficient Use of Congressional Time."

[5] The Administrator of Veterans' Affairs has reported that for each of the years from 1942 through 1947 there were absolutely no private acts whatsoever in effect conferring monetary benefits on veterans of World War II or on their dependents (Annual Reports of the Administrator of Veterans' Affairs for 1942, p. 67; for 1943, p. 66; for 1944, p. 68; for 1945, p. 69; for 1946, p. 108; for 1947, p. 146).

[6] The view that Congress intended the Federal Tort Claims Act to afford relief to private citizens rather than to servicemen is expressly confirmed by the available Congressional committee reports quoted by the court below (R. 42).

Still further evidence that the Private Laws, which Congress intended to eliminate by enacting the Federal Tort

fact that members of the armed forces were entitled to pension benefits, disability payments, free hospitalization and medical care for any injury during their period of service made unnecessary the passage of private acts in their behalf. There is no necessity, therefore, for going beyond the express purpose of the Act and expanding its scope to include claims by servicemen.

b. It is well established that where there is in existence a complete and comprehensive system of statutes pertaining to a specific subject matter, subsequent enactments of a general nature should generally be construed to except that specific subject

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Claims Act, were not laws relating to soldiers' claims is found in the very language of these Private Laws. These laws, without exception, provide that the damages awarded thereby are "in full settlement" or in "full satisfaction" of all of the beneficiary's claims against the United States as a result of the accident for which the award is made. (*E.g.*, Private Law 11, 59 Stat. 688; Private Law 12, 59 Stat. 689; Private Law 134, 59 Stat. 738; Private Law 366, 59 Stat. 836; Private Law 197, 58 Stat. 949; Private Law 589, 58 Stat. 1110; Private Law 49, 57 Stat. 605; Private Law 164, 57 Stat. 717). Where a damage award is so conditioned on fully releasing the United States from all liability, it obviously is of a type unsuited to the needs of a soldier who otherwise would be entitled to pension and disability benefits, hospitalization and medical care, and the other benefits normally due him because he was a soldier at the time the injuries were sustained. For the same reasons, the similar language of the Federal Tort Claims Act itself renders that Act unavailable for the relief of soldiers' claims. See 28 U. S. C. 2672, 2679.

matter.[7] Adhering to this principle in *United States* v. *Sweet*, 245 U. S. 563, this Court allowed the exception of such specific matter, even though the statute had not listed such an exception, but had, like the Federal Tort Claims Act, listed several other exceptions.[8]

The decision of the court below applies this well-established principle in accordance with the rule of the *Sweet* case. The comprehensiveness and adequacy of the already existing statutory scheme of benefits for soldiers and their dependents, for disability or death incurred while in service, is partially described in the opinion of the court below (R. 43).[9] These existing federal laws include pro-

[7] *Ozawa* v. *United States*, 260 U. S. 178, 193, 194; *United States* v. *Jefferson Electric Mfg. Company*, 291 U. S. 386, 396; *United States* v. *Barnes*, 222 U. S. 513, 520; *United States* v. *American Trucking Association*, 310 U. S. 534, 544; *Townsend* v. *Little*, 109 U. S. 504, 512; *Missouri* v. *Ross*, 299 U. S. 72, 76; *United States* v. *Fixico et al.*, 115 F. 2d 389, 393 (C. C. A. 10); *Iriarte et al.* v. *United States*, 157 F. 2d 105, 108 (C. C. A. 1).

[8] The maxim: *expresso unius est exclusio alterius*, is, of course, nothing more than a guide to statutory construction, useful only in ascertaining legislative intent, and should not be applied when its use would result in repudiating such intent. *United States* v. *Barnes*, 222 U. S. 513, 519; *Industrial Trust Co.* v. *Goldman*, 59 R. I. 11, 18.

[9] Most of the vast number of these statutes are codified in Title 38, U. S. C. (Pensions, Bonuses, and Veterans' Relief). In addition, Title 10 (Army), Title 34 (Navy), and Title 37 (Pay and Allowances of Army, Navy, Marine Corps, Coast Guard * * *) contain many other statutes on military benefits

visions for monthly pension payments to dependents for death of a soldier,[10] monthly pension payments to the soldier for disabling injuries incurred in service,[11] full pay during periods of incapacity,[12] free and complete hospitalization and medical care,[13] death gratuities equivalent to one half of the deceased serviceman's annual pay,[14] and relatively

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and perquisites. The continuing and special interest of Congress in military and veterans' affairs is evident from the introduction, during the fiscal year 1947, of approximately 2,300 bills pertaining to veterans' benefits, many of which had for their purpose material changes in existing laws affecting veterans' relief (Annual Report of the Administrator of Veterans' Affairs, 1947, p. 64).

[10] Act of March 20, 1933, sec. 1(c), 48 Stat. 8, 38 U. S. C. 701(c). See 38 C. F. R. 1946 Supp. 35.06, p. 5913.

[11] Act of March 20, 1933, sec. 1(a), 48 Stat. 8, 38 U. S. C. 701(a). Disability payments range as high as $300 per month. Act of September 20, 1945, 59 Stat. 533, 534, amending Vet. Reg. No. 1(a), part I, par. II(o). See also Public Law 877 (80th Cong., 2d sess.), for additional benefits ranging from $14.00 to $56.00, conferred recently by Congress on disabled veterans having dependents.

[12] See Act of May 17, 1926, 44 Stat. 557, 10 U. S. C. 847a; Act of June 16, 1942, 56 Stat. 363, as amended, 37 U. S. C. 109, 110; cf. Article of War 107, 41 Stat. 809, 10 U. S. C. 1579.

[13] Act of June 7, 1924, sec. 10, 43 Stat. 610, as amended, 38 U. S. C. 434; Act of March 20, 1933, sec. 6, 48 Stat. 9, 38 U. S. C. 706; 10 C. F. R. Cum. Supp. 77.2(a) and 77.15(b).

[14] Act of December 17, 1919, as amended, 41 Stat. 367, 57 Stat. 599, 10 U. S. C. 903; Act of December 10, 1941, 55 Stat. 796, 10 U. S. C. 456; Act of May 22, 1928, 45 Stat. 710, as amended, 34 U. S. C. 943.

inexpensive life insurance up to $10,000 under the National Service Life Insurance Act.[15]

c. The benefit and compensation provisions of this comprehensive statutory scheme for servicemen have always been viewed as exclusive, and have impelled consistent holdings to the effect that military personnel may not recover from the United States on a claim already cognizable under the benefit and compensation provisions of other statutes, notwithstanding the fact that the statute under which suit was brought made no specific exception of the claims of members of the armed services. *Bradey* v. *United States*, 151 F. 2d 742 (C. C. A. 2), certiorari denied, 326 U. S. 795, rehearing denied, 328 U. S. 880, and *Dobson* v. *United States*, 27 F. 2d 807 (C. C. A. 2), certiorari denied, 278 U. S. 653 (suits under Public Vessels Act, 46 U. S. C. 781 et seq.); *O'Neal* v. *United States*, 11 F. 2d 869 (E. D. N. Y.), affirmed, 11 F. 2d 871 (C. C. A. 2); *The West Point*, 71 F. Supp. 206, 212 (E. D. Va.); *Seidel* v. *Director General of Railroads*, 149 La. 414; *Moon* v. *Hines, Director General of Railroads*, 205 Ala. 355; *Goldstein* v. *New York*, 281 N. Y. 396.[16]

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[15] Act of October 8, 1940, sec. 602, 54 Stat. 1009, as amended, 38 U. S. C. 802.

[16] Several additional cases are in accord, *e.g.*, *Bryson* v. *Hines*, 268 Fed. 290 (C. C. A. 4); *Posey* v. *T. V. A.*, 93 F. 2d 726 (C. C. A. 5); *Kennedy* v. *New York*, 16 N. Y. Supp. (2) 288; *McAuliffe* v. *New York*, 176 N. Y. Supp. 679.

Since Congress in enacting the Federal Tort Claims Act may be presumed to have been familiar with the *Bradey, Dobson*, and related cases,[17] it is reasonable to assume that it intended that that Act should be interpreted in a like manner. Congressional awareness that such an exception would be implied by the courts, as it had been in the prior statutes, may make understandable, as was indicated by the court below (R. 48), the omission of a specific "serviceman" exception from the Tort Claims Act.[18]

[17] That Congress, in enacting a law similar to those previously construed by the courts, is deemed to have been cognizant of those judicial decisions and is considered, in the absence of persuasive considerations to the contrary, as having intended the same construction to apply to the later statute, is well settled. *United States Navigation Co., Inc.* v. *Cunard S. S. Co., Ltd., et al.*, 284 U. S. 474, 481; *The Abbotsford*, 98 U. S. 440; *Overstreet et al.* v. *North Shore Corp.*, 318 U. S. 125, 131, 132; *Chicago & Alton Railroad Co.* v. *United States*, 49 C. Cls. 463, affirmed, 242 U. S. 621; *United States* v. *Security-First National Bank of Los Angeles et al.*, 30 F. Supp. 113 (S. D. Calif.), appeal dismissed, 113 F. 2d 491 (C. C. A. 9); *Progressive Miners of America et al.* v. *Peabody Coal Co. et al.*, 7 F. Supp. 340, 346 (E. D. Ill.), affirmed, 75 F. 2d 460 (C. C. A. 7); *United States* v. *Albright et al.*, 234 Fed. 202 (D. Mont.); *Plunkett* v. *United States*, 58 C. Cls. 359.

[18] The inferences drawn by petitioner from the omission, in the Federal Tort Claims Act, of exceptions in prior bills excluding claims cognizable under the United States Employees Compensation Act and the World War Veterans' Act of 1924 (Pet. 13-15) are in no way here relevant. Both proposed exceptions clearly envisaged injury to a civilian. While the 1924 Act was primarily addressed to death or injury suffered by servicemen in World War I between April

2. Also lacking in merit is petitioners' contention (Pet. 16-17, 21-22) that only those soldiers who have sustained service-caused injuries (*i.e.*, those resulting from direct military activity) should be confined to the benefits available under military and veterans' laws, and that soldiers, like petitioners, whose injuries and death were merely service-connected (*i.e.*, those occurring during the period of the soldier's service, but while he was on leave or furlough from military duties) should not only have access to such benefits but also the right to sue for additional damages under the Federal Tort Claims Act.

The court below rejected this attempted distinction, stating that there is nothing in the Act "which would justify us in holding that Congress intended to include death of, or injury to, a soldier, which was not service-caused * * * and to exclude service-caused injury or death" (R. 47). While it is true that benefits under the military and veterans' laws are payable when the serviceman's injury or death occurred in "line of duty," Congress has specifically defined that term to include any injury or death incurred during the serviceman's period of military service, whether or not the soldier at the time of his injury or death was on furlough, au-

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6, 1917, and July 2, 1921 (Act of June 7, 1924, secs. 212, 200, 43 Stat. 623, 38 U. S. C. 422, 471), it also comprehended hospitalization and pensions for certain disabilities or for death resulting from injuries sustained by the veteran after he had left the armed services.

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's opinion.

2d 599 (C. C. A. 2); *United States* v. *Marine*,[20] 155 F. 2d 456 (C. C. A. 4).

As shown above, petitioners are receiving all benefits and payments to which they are by law entitled. The benefits here, with respect to the injured serviceman, include a lifetime, monthly disability pension of $27.60, free hospitalization and medical care. With respect to the deceased serviceman, the six-month gratuity payment has been made, and monthly pension payments will be made to his parents upon their furnishing proper proof of dependency. No disavowal of these, or other payments such as the insurance benefits mentioned above, has been made. Receipt of these statutory payments constitutes, we submit, a bar to the present actions.

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[20] It is appropriate to note that the *Marine* case, heavily relied on by petitioner (Pet. 19-20), expressly recognizes that the serviceman, as distinguished from a civilian employee, has no right to sue, but as in the instant case, is restricted to the benefits due him under the regular pension and disability benefit laws. *United States* v. *Marine*, 155 F. 2d 456, 460 (C. C. A. 4).

CONCLUSION

The decision below is correct, and there exists no conflict. The petition for a writ of certiorari should be denied.[21]

Respectfully submitted.

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MORTON HOLLANDER,
Attorneys.

December, 1948.

[21] Petitioner has invited the Court's attention to the case of *Samson* v. *United States*, 79 F. Supp. 406 (S. D. N. Y.). That District Court opinion, overruling a motion of the United States to dismiss the complaint, was handed down on December 26, 1947, eight months before the decision of the Court of Appeals for the Fourth Circuit in the instant case. Since the *Samson* case has not yet gone to trial, the District Court may reconsider its position in light of the appellate opinion now available to it. Cf. *Alansky* v. *Northwest Airlines*, 77 F. Supp. 556, 559 (D. Mont.), where the court overruled a similar motion by the United States to dismiss "with the right reserved for further consideration at time of trial" since "in the meantime the decision of a higher court may be forthcoming to . . . [clarify] . . . the Act." Moreover, the reasoning in the *Samson* opinion is based on a strained interpretation of the effect of the repeal of the Military Claims Act by the Federal Tort Claims Act and on an unsound assumption that the soldier involved in the case would have been able to secure a recovery from the United

States under the Military Claims Act. That Act, however, clearly limits recovery to "reasonable medical, hospital and burial expenses actually incurred" and prohibits payment where such expenses were paid by the United States (Act of July 3, 1943, 57 Stat. 372, as amended, 60 Stat. 332; 31 U. S. C. 223b). As shown above, *supra*, pp. 9-10, all such expenses, when incurred by soldiers, are borne by the United States. Moreover, the District Court's view that the soldier's death was "not incident" to his service because he was not directly engaged in active military duties, departs from the well established rule that any injury or death of a soldier is incident to his military service, or is service connected, so long as he is not guilty of misconduct. See *supra*, pp. 10-11.

It is also appropriate to note that all other available district court opinions, even though decided before the opinion below was handed down, hold the Federal Tort Claims Act inapplicable to soldier's injury and death claims. *Jefferson* v. *United States*, 77 F. Supp. 706 (D. Md.); *Troyer* v. *United States*, 79 F. Supp. 558 (W. D. Mo.); *Atkinson* v. *United States*, unreported, (D. Colo.); *Griggs* v. *United States*, unreported, (D. Colo.). Appeals are pending in the *Atkinson* and *Griggs* cases in the Tenth Circuit and in another case arising in the Sixth Circuit where no opinion was written, *United States* v. *Armstrong*. There is nothing to indicate, should the petition in the instant case be denied, that the Courts of Appeals for the Sixth and Tenth Circuits would decline to follow the well reasoned opinion below, that of Judge Chesnut in the *Jefferson* case and the decisions of the Court of Appeals for the Second Circuit in the *Bradey* and *Dobson* cases. Thus we submit that there presently exists no occasion for this Court to entertain and decided this question. In the unlikely event that a conflict arises it will be time enough for this Court to review the problem.

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